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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

THE CITY AND COUNTY OF SAN  
FRANCISCO, et al.,

Plaintiffs,

v.

PURDUE PHARMA L.P., et al,

Defendants.

Case No. 3:18-cv-07591-CRB

**MANUFACTURER DEFENDANTS'  
JOINT REQUEST FOR JUDICIAL  
NOTICE OF MATERIALS CITED IN  
DEFENDANTS' JOINT MOTION AND  
MANUFACTURER DEFENDANTS'  
JOINT MOTION TO DISMISS FIRST  
AMENDED COMPLAINT**

Date: June 19, 2020  
Time: 10:00 a.m.  
Dept: Courtroom 6  
Judge: Honorable Charles R. Breyer

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that, on June 19, 2020, at 10:00 a.m., or as soon as this matter may be heard thereafter in Courtroom 6, 17th Floor, of the United States District Court, Northern District of California, located at 450 Golden Gate Avenue, San Francisco, California, the Honorable Charles R. Breyer presiding, the Manufacturer Defendants<sup>1</sup> will and hereby do move this Court to take judicial notice of Exhibits 1-11 to the concurrently-filed Declaration of Charles R. Lifland under Federal Rule of Evidence 201.

This Request for Judicial Notice accompanies Defendants' Joint Notice of Motion and Joint Motion to Dismiss Plaintiff's First Amended Complaint and Manufacturer Defendants' Joint Notice of Motion and Joint Motion to Dismiss Plaintiff's First Amended Complaint, the Memoranda of Points and Authorities in support thereof, Declaration of Charles C. Lifland, the Proposed Order, any Reply Memorandum, the pleadings and files in this action, and such arguments and authorities as may be presented at or before the hearing.

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<sup>1</sup> The Manufacturer Defendants (or "Manufacturers") are Defendants Allergan Finance, LLC f/k/a Actavis, Inc. f/k/a/ Watson Pharmaceuticals, Inc., Allergan Sales, LLC and Allergan USA, Inc., Endo Pharmaceuticals Inc., Endo Health Solutions Inc., Par Pharmaceutical, Inc., and Par Pharmaceutical Companies, Inc., Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc., Mallinckrodt LLC, SpecGx LLC, Noramco, Inc., Teva Pharmaceuticals USA, Inc.; Cephalon, Inc.; Actavis LLC; Actavis Pharma, Inc. f/k/a Watson Pharma, Inc; Watson Laboratories, Inc.; Warner Chilcott Company LLC; Actavis South Atlantic LLC; Ac-tavis Elizabeth LLC; Actavis Mid Atlantic LLC; Actavis Totowa LLC; Actavis Kadian LLC; Actavis Laboratories UT, Inc. f/k/a Watson Laboratories, Inc.-Salt Lake City; and Actavis Laboratories FL, Inc. f/k/ Watson Laboratories, Inc. Florida.

Pursuant to Federal Rule of Evidence 201, the Manufacturer Defendants respectfully request that the Court take judicial notice of the documents attached as Exhibits 1 through 11 to the Declaration of Charles C. Lifland (the “Lifland Declaration”) filed in support of the Defendants’ Joint Motion and Manufacturer Defendants’ Joint Motion to Dismiss Plaintiff’s First Amended Complaint (“FAC”).

In deciding a motion to dismiss, courts may take judicial notice of facts that are “not subject to reasonable dispute” because they are “generally known” or “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b); *see also id.* Rule 201(d) (“The court may take judicial notice at any stage of the proceeding.”). When a plaintiff “refers extensively” to a document or the “document forms the basis of the plaintiff’s claim,” the defendant can offer the document to the court. *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). The court can then “treat such a document as part of the complaint” and “assume that its contents are true for purposes of a motion to dismiss under Rule 12(b)(6).” *Id.* Likewise, the court “may take judicial notice on its own.” Fed. R. Evid. 201(c). The Court should take judicial notice of Exhibits 1 through 11 because each exhibit is referenced in the FAC and/or consists of material that is judicially noticeable under Rule 201.

**I. Exhibits 1-8 Are Documents Specifically Referenced in the FAC That May Be Judicially Noticed**

Exhibits 1 through 8 are specifically referenced in the FAC and therefore can be judicially noticed. *See Ritchie*, 342 F.3d at 908 (court may consider document “if the plaintiff refers extensively” to it or it “forms the basis of the plaintiff’s claim”); *Minor v. FedEx Office and Print Services, Inc.*, 78 F. Supp. 3d 1021, 1027 (N.D. Cal. 2015) (court may consider “documents whose contents are alleged in the complaint”); *Opperman v. Kong Technologies, Inc.*, 2017 WL 3149295, at \*4 (N.D. Cal. July 25, 2017) (taking judicial notice of documents Plaintiff “makes reference to” in complaint). Exhibits 1 through 8 are copies of FDA-approved prescription drug labels for certain prescription opioid medications of Manufacturer Defendants, which are referenced in the FAC at paragraphs 400 and 495.

## II. Exhibits 1-11 Are Agency Records and Reports That May Be Judicially Noticed

Exhibits 1 through 8, as well as Exhibits 9 through 11, are additionally subject to judicial notice because they are the FDA’s administrative records, all of which can be found on the FDA’s website and are not subject to reasonable dispute.

Courts may take judicial notice of the “records and reports of administrative bodies.” *United States v. 14.02 Acres of Land More or Less in Fresno County*, 547 F.3d 943, 955 (9th Cir. 2008) (internal quotation marks omitted); *see, e.g., Minor*, 78 F. Supp. 3d at 1028 (granting request for judicial notice of “records of administrative agencies”). These include documents that are publicly available on an agency’s—including the FDA’s—website, like notices, reports, guidance documents, memoranda, and news releases. *See Gustavon v. Wrigley Sales Co.*, 961 F. Supp. 3d 1100, 1113, n.1 (N.D. Cal. 2013) (taking judicial notice of FDA response letter); *Zeiger v. WellPet LLC*, 304 F. Supp. 3d 837, 845 (N.D. Cal. 2018) (FDA memorandum, safety assessments, and Question and Answer documents); *Wilson v. Frito-Lay North America, Inc.*, 260 F. Supp. 3d 1202, 1207 (N.D. Cal. 2017) (FDA guidance documents); *In re Yahoo Mail Litigation*, 7 F. Supp. 3d 1016, 1025 (N.D. Cal. 2014) (legislative history); *Opperman*, 2017 WL 3149295, at \*4 (information available on government website). Thus, “[p]ublic records and information on government agency websites are properly subject to judicial notice.” *Wilson*, 260 F. Supp. 3d at 1207. Likewise, as FDA-approved or -promulgated documents, Exhibits 1 through 11 are judicially noticeable for the independent reason that they are “capable of accurate and ready determination” by “sources whose accuracy cannot reasonably be questioned.” *In re Yahoo Mail Litigation*, 7 F. Supp. 3d at 1024 (citing Fed. R. Evid. 201(b)).

For the foregoing reasons, Manufacturer Defendants request that the Court take judicial notice of Exhibits 1 through 11 to the Lifland Declaration.

1 Dated: April 17, 2020

Respectfully submitted,

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**ATTESTATION**

I, Amy R. Lucas, hereby attest, pursuant to N.D. Ca. Civil L.R. 5-1, that the concurrence to the filing of this document has been obtained from each signatory hereto.

DATED: April 17, 2020

/s/ Amy R. Lucas  
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